
TESTIMONY

of

**LAURA E. JORDAN, ESQ.
THE CAPITAL LAW FIRM, PLLC**

regarding

**HOUSE BILL 1151, AN ACT CONCERNING CORPORATIONS –
LIMITED LIABILITY COMPANIES –
ELECTION TO BE A BENEFIT CORPORATION**

before the

**MARYLAND HOUSE OF DELEGATES
ECONOMIC MATTERS COMMITTEE**

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TESTIMONY OF LAURA E. JORDAN, ESQ.
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Good afternoon. Thank you for allowing me to testify regarding House Bill 1151, an act to amend the Corporations and Associations Article of the Maryland Code to provide for the creation of “Benefit LLCs.”

BACKGROUND

The Capital Law Firm, PLLC, based in Washington, D.C., provides corporate and litigation counsel to U.S.-based and international clients, including foreign governments, in its Corporate, Litigation, Oil & Gas, and Foreign Sovereign practices. Our attorneys aggressively protect and advance the property and rights of the Firm’s clients, drawing on a wealth of corporate, transactional, litigation, and negotiation experience.

The Firm was privileged to form the first Benefit Corporation in the United States for our client, BBWoof Hyattsville, Inc. BBWoof Hyattsville is an affiliate of The Big Bad Woof, a companion animal store specializing in providing the best organic, holistic and premium raw diets, providing access to a range of alternatives including a wide range of herbal, holistic and homeopathic supplements for companion animals. BBWoof Hyattsville will begin operations early this year of its prototype franchise store for its broad franchise rollout.

Along with CLW Services, Inc., the Firm is also a co-sponsor of the Maryland Benefit Corporation Incubation Center (“MBCIC”) located in Lanham. Based on shared knowledge, the MBCIC enables social entrepreneurs to focus on making their business and social mission successful. The MBCIC is open to existing Benefit Corporations or companies that intend to form or re-organize as Maryland Benefit Corporations, and have completed the requisite corporate formalities prior to entering the MBCIC. If authorized, Benefit LLCs would be added to the roster of eligible firms.

MERITS OF HOUSE BILL 1151

There are several reasons House Bill 1151 deserves passage.

Authorization of Benefit LLCs is a logical extension of the landmark Benefit Corporation legislation passed last year by the Maryland General Assembly. Since Maryland took the lead in the Benefit Corporation arena with groundbreaking passage of its Benefit Corporation legislation, it is fair to say that Benefit Corporations have been a success story in Maryland, in the United States, and beyond. They have been featured in the Washington Postⁱ, Baltimore Business Journal,ⁱⁱ on BBC World Radio News,ⁱⁱⁱ and in other media throughout the region and country.

Creation of Benefit LLCs will fill an obvious void in Maryland corporate law. In lecturing on this issue, meeting with entrepreneurs, and speaking to media, I see great interest

from entrepreneurs and the public at large about this game-changing corporate form. However, I am frequently asked whether it is possible to form as a Benefit LLC. It is my hope that soon, social entrepreneurs wanting to operate through a limited liability company can avail themselves of the myriad advantages of the Benefit LLC form. Passage of the legislation would also complete the parallel structure with non-benefit corporation forms.

Benefit LLCs and Benefit Corporations increase market efficiency by facilitating a closer alignment between the true costs and benefits of consumers' purchase decisions. Garrett Hardin's 1968 classic essay "The Tragedy of the Commons"^{iv} illustrates the social problems created when costs and benefits of apparently rational decisions are not aligned. The Benefit LLC, like the Benefit Corporation, increases the efficiency of our free market system by facilitating perfect information – one of the fundamental assumptions of a free market – and by allowing consumers to make purchase decisions that more accurately reflect their preferences across the entire range of relevant factors, not just price and availability. The Cone Cause Evolution Study^v released in 2010 documents the significant extent to which consumers are willing to convert their social cause preferences into purchase decisions. Benefit LLCs help make the marketplace more responsive to this consumer.

Benefit LLCs also increase corporate transparency, another component of perfect information. By identifying, adhering to, and reporting by reference to independent third-party standards, such as those set by B Corporation from Berwyn, Pennsylvania, consumers and other stakeholders are equipped with better information to evaluate their decisions.

Benefit LLCs will stimulate Maryland's economy. This will occur in three ways: first, Maryland will reap a financial and reputational premium from being the first state in the country to authorize Benefit Corporations and Benefit LLCs, as companies unable to form elsewhere will form here. Second, as Benefit Corporations and Benefit LLCs form and operate here, tax revenue from their income will add to the State's bottom line. Third, to the extent that Benefit LLCs are local businesses operating primarily within Maryland, their economic impact will be leveraged by the greater "Local Multiplier Effect" created by a dollar spent at a locally-owned business versus one spent at a national chain.

Benefit LLCs will also increase quality of life for Maryland residents. Maryland is the only state in the country with a government-supported Genuine Progress Indicator.^{vi} To the extent that Benefit LLCs positively impact one of the twenty-six indicators that make up Maryland's Genuine Progress Indicator, they will measurably increase quality of life for Maryland residents.

Benefit LLCs require no fundamental change in our corporate laws. The brilliance and elegance of the Benefit Corporation and Benefit LLC forms is that they fit squarely within our existing free-market economy. They are not a top-down, government-imposed "solution" shoved down the throats of unwilling business people by a domineering bureaucracy. To the contrary, they harness the power of the marketplace by allowing entrepreneurs and their stakeholders to decide which social issues require the greatest attention, and what form of

attention they deserve. I will also note in passing that despite the conception of some that Benefit Corporations and Benefit LLCs are strictly the province of the politically progressive, the law does not classify the public benefits to be pursued as “liberal” or “conservative.” Benefit LLCs enhance freedom of choice and limited government intrusion on private lives, both doctrines that are generally embraced by conservatives.

Finally and perhaps most importantly, Benefit LLCs accomplish these worthy objectives without any additional cost to the State of Maryland. I respectfully disagree with some advocates who suggest that Benefit Corporations and Benefit LLCs be accorded tax advantages beyond those inherent in the corporate form. I believe that providing such tax advantages would dilute the powerful free market argument in favor of Benefit Corporations and Benefit LLCs. I also believe that targeted tax advantages would potentially provide ammunition for any opponents of this corporate form. Further, I believe they are unnecessary as a practical matter. The marketplace will provide Benefit Corporations and Benefit LLCs the competitive advantage they earn based on what they deliver to consumers and other stakeholders. On the other hand, providing preference to Benefit Corporations or Benefit LLCs in state procurement and economic development decisions is something I would encourage.

MINOR CAVEAT

With the manifest advantages of the Benefit LLC, I would offer a minor caveat to the way the bill is currently drafted. As currently framed, it defines Benefit LLCs by reference to Benefit Corporations, and potentially subjects Benefit LLCs to the broad spectrum of statutory and common law currently applicable only to corporations. This appears to be an unintended consequence of drafting, and I respectfully suggest that the bill be amended to alleviate this.

CONCLUSION

Thank you for allowing me to testify on House Bill 1151, an act to amend the Corporations and Associations Article of the Maryland Code to provide for the creation of Benefit LLCs. I would be happy to answer any questions or provide additional information you would find helpful.

ⁱ Douglas, Danielle. “‘Benefit Corporations’ Sign Up.” *Washington Post* 24 Jan. 2011: A11. Print.

ⁱⁱ Haber, Gary. “Md. LLCs Seek ‘Benefit’ Status for Eco-Friendly Causes; Legislation Mirrors ‘Benefit Corporations’ Bill Passed Last Year.” *Baltimore Business Journal* 18 Feb 2011, Print.

ⁱⁱⁱ “Not For Profit.” *Business Daily*. BBC World Service: 15 Feb. 2011. Radio. 20 Feb. 2011. <http://www.bbc.co.uk/iplayer/episode/p00dgp8x/Business_Daily_Not_for_profit/>.

^{iv} Hardin, Garrett. “The Tragedy of the Commons.” *Science*. 162. (1968): 1243-48. Print.

^v “2010 Cone Cause Evolution Study.” Boston, MA: Cone LLC, 2010. Print.

^{vi} “Maryland Genuine Progress Indicator.” *Maryland -- Smart, Green, and Growing*. Office of the Governor, n.d. Web. 7 Mar 2011. <<http://www.green.maryland.gov/mdgpi/>>. Last visited March 8, 2011.